

Letter of Findings: 01-20210043
Indiana Individual Adjusted Gross Income Tax
For the Year 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual S-Corporation Shareholders met their burden of establishing that they were entitled to claim a research expense credit on their 2019 individual income tax return and that the Department's decision to the contrary was wrong.

ISSUES

I. Indiana Individual Adjusted Gross Income Tax - Research Expense Credit.

Authority: IC § 6-3.1-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Stinson Estate v. United States*, 214 F.3d 846 (7th Cir. 2000); *Conklin v. Town of Cambridge City*, 58 Ind. 130 (1877); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); Treas. Reg. § 1.41-4(d).

Taxpayers argue that the Department erred in disallowing a Research Expense Credit claimed on their 2019 Indiana individual income tax return.

STATEMENT OF FACTS

Taxpayers are Indiana residents who filed a 2019 Indiana Individual Income tax return (IT-40). On that return, Taxpayers claimed an approximately \$1,200 offsetting credit attributable to the research expenses reported on their S-Corporation's tax return which "flowed through" to the benefit of Taxpayers. Taxpayers claimed this credit on their Schedule 6 designated as a "Research Expense Credit" ("REC").

The Indiana Department of Revenue ("Department") reviewed Taxpayers' IT-40 and disallowed the credit. The disallowance of the credit resulted in an assessment of additional 2019 income tax.

Taxpayers disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayers explained the basis for their protest. This Letter of Findings results.

I. Indiana Individual Adjusted Gross Income Tax - Research Expense Credit.

DISCUSSION

The issue is whether Taxpayers have met their burden of establishing that they were entitled to claim an approximately \$1,200 REC and - as a result - the assessment of additional income tax was unwarranted.

Tax assessments are *prima facie* evidence that the Department's assessment of tax is presumed correct; the taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-3.1-4-1 provides that, "'Research expense tax credit' means a credit provided under this chapter against any tax otherwise due and payable under [IC 6-3](#)." Similar to deductions, exemptions, and exclusions, tax credits - such as RECs - "are matters of legislative grace." *Stinson Estate v. United States*, 214 F.3d 846, 848 (7th Cir. 2000).

The taxpayer who claims the tax credit is required to retain records necessary to substantiate a claimed credit. Indiana and federal law require that a taxpayer maintain and produce contemporaneous records sufficient to verify those credits. See Treas. Reg. § 1.41-4(d). (See also IC § 6-8.1-5-4(a) which requires that taxpayers *keep* records). Where such a credit is claimed "the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 100-01 (Ind. Ct. App. 1974) (citing *Conklin v. Town of Cambridge City*, 58 Ind. 130, 133 (1877)).

The Department denied the credit and - in an internal note describing the decision - explained that "Per PRI review item (Indiana Research Expense Credit) for refund, adjusted Schedule 6 with denial of this credit claimed for [\$1,200] since DOR found this credit was fully claimed at the [corporate] level."

In other words, the Department found that Taxpayers - as shareholder/owners of the S-Corporation - were not entitled to claim the \$1,200 credit because the value of the credits was fully utilized on the S-Corporation's return.

A careful review of the Department's records and the information provided by Taxpayers establishes that Taxpayers were right, and the Department was wrong in finding that the RECs were fully utilized. Taxpayers were entitled to the REC originally claimed. Consequently, the Taxpayers' records will be adjusted to reflect that determination and - as originally requested - a refund will follow.

Having provided the additional documentation and setting forth their analysis and explanation, Taxpayers have met their burden under IC § 6-8.1-5-1(c) of establishing that the assessment was wrong.

FINDING

Taxpayers' protest is sustained.

April 6, 2021

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